


Councilmember Sharon Ambrose

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To declare the existence of an emergency, due to Congressional review of the Department of Insurance and Securities Regulation Merger Review Temporary Act of 2002 with respect to the need to amend the Holding Company System Act of 1993 to change the burden of proof for an acquiring company's proposition to acquire a nonprofit domestic insurer, to extend the length of the review period of the Mayor for certain insurance mergers, and to clarify who may participate in the public hearing and to provide for a review period after the determination made by the Mayor; and to amend the Hospital and Medical Services Corporation Regulatory Act of 1996 to change the burden of proof for an acquiring company's proposition to acquire a nonprofit domestic insurer.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Department of Insurance and Securities Regulation Merger Review Congressional Review Emergency Declaration Resolution of 2002".

Sec. 2. (a) On July 2, 2002, the Council passed the Department of Insurance and Securities Regulation Merger Review Emergency Amendment Act of 2002 to extend, on an emergency basis, the decision-making time period when reviewing merger applications, of the Department of Insurance and Securities Regulation Commissioner ("Commissioner"), from 30 days to 120 days. This emergency legislation gave the Commissioner the option to increase the length of the review period if it is necessary and if all interested parties have given their consent.

This legislation was passed on an emergency basis to further enable the Commissioner to review the proposed conversion of Group Hospitalization and Medical Services, Inc. ("GHMSI") from a nonprofit hospital and medical services corporation to a for-profit hospital and medical services corporation and subsequently, the acquisition of GHMSI by WellPoint Health Networks, Inc.

(b) To further enable the Commissioner during the review process, there also was an immediate need to shift the burden of proof when the Commissioner is deciding on whether or not to permit conversions, and mergers, of for-profit insurance companies to, or with, nonprofit insurance companies. Prior to this emergency legislation, if the Commissioner cannot determine that it is not in the public interest, then the Commissioner must allow the merger or acquisition to proceed. With these amendments to the law there is a shift of this burden to the acquiring company. In the case currently before the Commissioner, this would mean that WellPoint and GHMSI would be required to prove that the conversion and acquisition is in the public interest of the residents of the District. If they cannot prove that the conversion and acquisition is in the public interest of the residents of the District of Columbia, then the Commissioner must deny the application.

(c) This emergency legislation also changed the phrase "any person to whom notice of hearing was sent, and any other person whose interest may be affected" to the phrase "and any party". The purpose of this amendment was to conform the language of the Holding Company System Act with the defined terms in the D.C. Administrative Procedures Act ("DCAPA"). The DCAPA definition of "party" would permit the Commissioner to create one or more classes of party status, thus broadening the definition and permitting more interested persons to be involved in the hearing process.

(d) This emergency also provided that after the Commissioner made a determination about the proposed conversion and acquisition of GHMSI by WellPoint such determination will not be effective for 90 days. Current law did not provide for Council review of the decision made by the Commissioner. The amendment provided for a 90-day period during which the Council will have the opportunity to review the decision regarding the conversion and acquisition and consider whether it is in the public interest.

(e) The amendments were also included in the Department of Insurance and Securities Regulation Merger Review Temporary Amendment Act of 2002, which passed the Council on September 17, 2002. Because of Mayoral and Congressional review periods that bill will not become effective until early 2003. Accordingly, it is necessary to close the gap that would otherwise be established by the expiration of the emergency bill which expires on October 21, 2002.

(f) Consequently, it is necessary that the Council adopt this legislation on an emergency basis to aid the Commissioner in eliminating any errors in the decision he is preparing to make regarding the GHMSI conversion application and subsequent applications.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Department of Insurance and Securities Regulation Merger Review Congressional Review Emergency Amendment Act of 2002 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.